

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNIVERSAL CITY STUDIOS, INC.,

PLAINTIFF,

-against-

NINTENDO CO., LTD. and
NINTENDO OF AMERICA, INC.,

DEFENDANTS.
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: 82 Civ. 4259 (RWS)
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: ANSWERS OF DEFENDANT,
: NINTENDO OF AMERICA,
: INC., TO PLAINTIFF'S
: FIRST INTERROGATORIES
: AND FIRST REQUEST FOR
: PRODUCTION OF DOCUMENTS
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Defendant Nintendo of America, Inc. ("Nintendo America") hereby answers the first set of interrogatories and first request for production of documents of the plaintiff, Universal City Studios, Inc., as follows:

Interrogatory No. 1

Describe separately the business activities and functions performed by (a) Nintendo and (b) Nintendo America.

Answer To Interrogatory No. 1

Nintendo Co. Ltd. ("Nintendo") is a corporation organized under Japanese law which was founded on September 1889 and was established on November 20, 1947. Its principal place of business is Kyoto, Japan. It has branches in five other Japanese cities. It has two wholly owned subsidiaries, Nintendo Leisure Systems, a Japanese corporation whose principal place of business is Tokyo and Nintendo of America, Inc. ("Nintendo America"). Nintendo is engaged in the

manufacture, assembly, and sale of arcade video games; hand held video games; playing cards; mah-jong games; tuggle board games and amusement arcade games. It sells all its products either in Japan or f.o.b. Japan. It is also involved in licensing of its trademarks and copyrights.

Nintendo America is a corporation established in April 1980 in New York. It was merged into a newly formed corporation under the laws of the State of Washington in February 1982. It is engaged in the importation, assembly, manufacture, and sale f.o.b. Seattle of video arcade games. It also imports hand held video games which it sells f.o.b. Seattle and invests in real estate in the State of Washington. It has one subsidiary Nintendo of America -- New York Inc.

Interrogatory No. 2

Identify and give a brief description of all coin-operated video arcade games manufactured by defendants which are distributed and sold in the United States.

Answer To Interrogatory No. 2

Nintendo manufactures two coin operated video arcade games, Donkey Kong and Donkey Kong, Jr., which are presently sold by Nintendo to Nintendo America (f.o.b. Japan). Nintendo America previously imported other video games manufactured by Nintendo which because of poor sales it decided to discontinue. Sales of Donkey

Kong, Jr. in the United States began in August 1982. Brochures describing Donkey Kong and press releases describing Donkey Kong, Jr. are attached hereto. In addition, photographs of both games are attached hereto.

Interrogatory No. 3

Identify the persons responsible for (a) developing and (b) marketing, selling and promoting in the United States the game DONKEY KONG. If defendants have documents which describe or narrate the circumstances which led to the development and subsequent marketing of DONKEY KONG, please give a description of the documents and state where they are located.

Answer To Interrogatory No. 3

In May, 1982, Nintendo filed a complaint and a motion for a preliminary injunction in the District Court of Kyoto, Japan, against Kabushiki Kaisha Falcon. The basis of the action was Falcon's manufacture and sale of video games which involved the same game display as that of Donkey Kong. In connection with that action, affidavits concerning the development of Donkey Kong were filed in the District Court of Kyoto from Gunpei Yokoi, manager of the First Development Department of Nintendo, and Shigeru Miyamoto, an employee in the Creative Section of the Planning Department of Nintendo. Copies of their affidavits are filed herewith. In summary, the affidavits state that the development of Donkey Kong commenced at a meeting of the Development Department held March 2, 1981. The goal was to

create a game different from the video arcade games associated with space wars and car racing, which would employ an animative technique. The choice was made on a character to provide a humorous atmosphere. The animal chosen was a monkey of a humorous character.

Mr. Arakawa is responsible for marketing, selling and promoting Donkey Kong video games in the United States. Mr. Arakawa originally utilized Messrs. Alan D. Stone and Ronald J. Judy as independent contractors to market and sell video games. Messrs. Stone and Judy are presently employees of Nintendo America and are engaged in the marketing and selling of Donkey Kong in the United States under the supervision of Mr. Arakawa. A copy of their original contract with Nintendo America is attached hereto.

In addition, Nintendo America has retained Dentsu Corporation of America to prepare materials for the promotion of Donkey Kong in the United States. Attached hereto are promotional pictures of the characters created for the Donkey Kong game and pictures of the screen levels.

Interrogatory No. 4

When was the game DONKEY KONG (a) developed and (b) introduced in the United States? Please briefly describe defendants' marketing arrangements and procedures for selling or renting DONKEY KONG in the United States.

Answer To Interrogatory No. 4

The development of Donkey Kong was completed in Japan at the end of June 1981. The development included trademark searches conducted by counsel in both Japan and the United States. The first sale of Donkey Kong games by Nintendo America in the United States was in July of 1981. Nintendo America at that time already had in place a distributor network of approximately thirty distributors.

See also the answer to Interrogatory No. 3.

Interrogatory No. 5

- (1) When and with whom did the name DONKEY KONG originate?
- (2) Were any other names for this game considered? If so, what were they and what were defendants' reasons for not using them?
- (3) Give the reasons why defendants decided to use the name DONKEY KONG to denote the video arcade game which is the subject of this lawsuit.
- (4) Identify all documents which refer to or relate to the decision and the reasons for the decision by defendants to call DONKEY KONG, DONKEY KONG.

Answer To Interrogatory No. 5

See answer to Interrogatory No. 3. The name "Donkey Kong" was chosen in early June of 1981. The word "kong" is widely used in Japan as a synonym for monkey. The word "donkey" which is represented in the Japanese language by the idiograph, "roba", is used to convey the idea of humorous but stupid. A number of different names

were considered including Funny Kong, Mr. Kong, and Kong Fighter, but it was finally concluded that Donkey Kong best conveyed the intended notion of a humorous stupid monkey.

Interrogatory No. 6

State whether defendants considered calling the video arcade game which is the subject of this action by some name other than DONKEY KONG and if so give the other names that were considered and identify all documents which refer to or mention these other names.

Answer To Interrogatory No. 6

See the answer to Interrogatory No. 5. In addition, Mr. Arakawa of Nintendo America sent a telex to Nintendo requesting that the name of the video game be changed from Donkey Kong. A copy of his telex is attached hereto.

Interrogatory No. 7

State whether, when defendants were considering the name DONKEY KONG for their video arcade game, they compared or assessed the name DONKEY KONG in relation to the (a) name KING KONG, (b) gorilla character KING KONG or (c) story of KING KONG as told in the RKO 1933 or Dino DeLaurentis 1975 motion pictures of that story? Please identify all documents in defendants' possession which refer to or mention KING KONG.